

1911.

KANJI
DWARAKADAS
v.
HARIDAS
PURSHOTTAM,

Purshottam and Company which may have come to their hands.

Attorneys for the plaintiffs: *Messrs. Payne & Co.*

Attorneys for the defendants: *Messrs. Little & Co.*

Suit decreed.

H. S. C.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

1912.

January 8.

DAGDU VALAD ANANDRAM AND OTHERS (ORIGINAL DEFENDANTS NOS. 2-4),
APPELLANTS, v. MIRASAHEB VALAD TANHAJI AND OTHERS (ORIGINAL
PLAINTIFFS), RESPONDENTS.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2†—Agriculturist—
Definition—Son of agriculturist is not an agriculturist.*

The minor son of an agriculturist who is depending for his support on his father is not an agriculturist within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). Dependence for livelihood upon another who is an agriculturist is not the same thing as earning livelihood for oneself by agriculture. To earn livelihood by agriculture is to obtain means of livelihood by it.

SECOND appeal from the decision of C. C. Boyd, District Judge of Ahmednagar, confirming the decree passed by D. G. Medhekar, Subordinate Judge of Shevgaon.

* Second Appeal No. 912 of 1910.

† Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2, runs as follows:—

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1st.—"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may, for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

* * * * *

2nd.—In Chapters II, III, IV and VI, and in section 69, the term "agriculturist," when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.

Suit to redeem a mortgage.

The mortgage in question was passed by one Tanhaji (father of the plaintiff) in 1893 in favour of the defendant No. 1. The deed was expressed in the form of a sale-deed. At the date of mortgage the plaintiffs were living with their father Tanhaji who was an agriculturist and who maintained them.

In 1908 the plaintiffs brought this suit to redeem the mortgage.

The Subordinate Judge held that transaction evidenced by the deed was a mortgage and passed the usual redemption decree.

This decree was confirmed on appeal by the District Judge. One of the issues raised before the learned Judge was whether the plaintiffs were entitled to the benefit of the provisions of section 10A of the Dekkhan Agriculturists' Relief Act. This issue was found in the affirmative on the ground that at the date when the liability was incurred, that is, in 1893, the plaintiffs who were minors were maintained by their father Tanhaji who was an agriculturist; and that the plaintiffs were therefore entitled to be treated as agriculturists.

The defendants appealed to the High Court.

K. H. Kelkar, for the appellants.

D. A. Khare, for the respondents.

CHANDAVARKAR, J. :— The minors concerned in this case, it is found, were not agriculturists at the time of the suit. But the Courts below have given them the benefit of the provisions of the Dekkhan Agriculturists' Relief Act under the second definition of section 2, cl. (2), of the Act. According to that section, we must see what the definition of 'agriculturist' was at the time the liability was incurred. That definition was the same in 1893 that it is now, and, therefore, we have to see whether the minors concerned, either by themselves, or by their servants, or by their tenants, "earned their livelihood," wholly or principally by agriculture. It is found as a fact by the learned District Judge that at the time the liability was incurred these were minors depending for their support on their father who was an agriculturist at

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that time, and, therefore, their income, if they can be said to have had an income, was chiefly derived from agriculture. That was because they depended upon their father for their livelihood. But dependence for livelihood upon another who is an agriculturist is not the same thing as earning livelihood for oneself by agriculture. To earn livelihood by agriculture is to obtain the means of livelihood by it: *Dwarkojirav Baburav v. Balkrishna Bhalchandra*⁽¹⁾. Upon the ground that there is no evidence whatever to show that the minors earned their livelihood by agriculture at the time the liability was incurred, the decree must be reversed and the case sent back to the Subordinate Judge to be dealt with on the merits according to law with reference to the observations in this judgment.

Costs hitherto incurred to be costs in the cause.

Decree reversed.

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(1) (1894) 19 Bom. 255.

CIVIL REFERENCE.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

BHAGWANT RAMCHANDRA SHAHAPURKAR, PLAINTIFF, v. KAJI MAHAMAD ABAS WALAD KAJI MAHAMAD RUKMODIN, DEFENDANT.*

Civil Procedure Code (Act V of 1908), section 48—Limitation Act (IX of 1908), section 9—Minor—Extension of time—Decree—Execution.

A decree obtained on the 17th February 1898 was sought to be executed in 1901 by the decree-holder. As the decree-holder died thereafter leaving a minor son, further applications to execute the decree were filed by the minor's guardian, all within time. The minor attained majority in 1910. He then applied for the extension of the period of twelve years for the execution of the decree prescribed by section 48 of the Civil Procedure Code of 1908, on the ground of his minority between 1901-1910.

Held, that the period could not be extended under section 48 of the Civil Procedure Code, 1908, for once the limitation began to run from the date of the decree, the twelve years' period must be computed from that date.

* Civil Reference No. 11 of 1911.

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 January 9.